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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JAN 16 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

)

Price Cap Performance Review )  
for Local Exchange Carriers )

CC Docket No. 94-1

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FURTHER COMMENTS OF  
MFS COMMUNICATIONS COMPANY, INC.  
REGARDING PRICE CAP-RELATED COMPETITION ISSUES

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## SUMMARY

MFS is supportive of the Commission's efforts to modify its Price Cap regulations as necessary to reflect the growth of competition for local services and, to this end, proposes certain steps necessary to protect new entrants from LEC anticompetitive practices. The establishment of effective safeguards for competition must exist before the Commission grants any further LEC pricing flexibility.

First, with respect to the need to condition LEC pricing flexibility on the removal of barriers to entry, MFS recommends the adoption of a "checklist," similar to that created by the DOJ, which sets forth a number of required steps designed to foster local competition before LECs may begin the provision of interexchange service. Second, with respect to other steps necessary to protect competition, MFS provides ten case-specific incidences that demonstrate that LECs retain the ability and the incentive to use their control over bottleneck facilities to impose unnecessary delay and excessive costs on their competitors.

MFS recommends that the Commission prevent LEC discrimination in costing and pricing practices by requiring LECs to develop their rates for those services purchased by their competitors in the same manner that they develop their rates for services requested by their end user and IXC customers. MFS strongly suggests that the Commission require LECs to provide far more detailed performance data than LECs currently must provide, in order to prevent LECs from discriminating against their competitors in provisioning and repair performance. MFS also recommends that the Commission establish a method of resolving *ad hoc* disputes on an expedited basis.

Third, with respect to the appropriate procedural mechanism for granting additional LEC pricing flexibility, MFS recommends that LECs be accorded additional pricing flexibility only within the context of a notice and comment rulemaking proceeding, in which LECs have met the burden of showing that barriers to entry have been eliminated and that effective competition has been established. Fourth, with respect to the use of existing Price Cap categories to define the relevant product market, the Commission must consider service categories, including all substitutable and functionally similar services, in order to address concerns of unlawful cross-subsidization. Finally, with respect to the definition of geographic markets, MFS suggests the use of existing LATAs, because such geographic areas reflect the presence of competition more accurately than other alternatives such as LEC density zones.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL

CC Docket No. 94-1

**FURTHER COMMENTS OF  
MFS COMMUNICATIONS COMPANY, INC.  
REGARDING PRICE CAP-RELATED COMPETITION ISSUES**

MFS Communications Company, Inc. (“MFS”), by its undersigned counsel and pursuant to the Commission’s *Order on Motion for Extension of Time*,<sup>1</sup> hereby respectfully submits these further Comments<sup>2</sup> regarding price-cap related competition issues, in response to the Commission’s Review of local exchange carriers’ (“LECs”) Price Cap Performance in the above-captioned proceeding.

## I. INTRODUCTION

In these Further Comments regarding the Commission's ongoing review of LEC Price Cap issues, MFS supports the Commission's efforts to modify its regulations as necessary to reflect the growth of competition for local services. As a company at the forefront of this competitive effort, however, MFS has experienced firsthand the ability of the LECs to abuse

<sup>1</sup> *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, DA 95-2361 (released Nov. 21, 1995).

<sup>2</sup> MFS submitted its initial Comments in Response to LEC Price Cap Performance in this proceeding on December 11, 1995.

their dominant market position to delay the implementation of the Commission's procompetitive initiatives, to prevent competitive entry into some markets, and to frustrate the growth of competition in others. Below, MFS discusses the steps that must be taken to protect new entrants from LEC anticompetitive practices. The establishment of effective safeguards for competition must be in place as a precondition to a grant of further LEC pricing flexibility.

## **II. RESPONSE TO PROPOSED REVISIONS**

### **A. The Need to Condition LEC Pricing Flexibility On Removal of Barriers to Entry (Issue 11a).**

In its Comments submitted in CCB-IAD Docket No. 95-110,<sup>3</sup> MFS urged the Commission to review the removal of barriers to competitive entry as critical factors in gauging the level of competition for local services. As part of that process, MFS recommended the adoption of a checklist of developments that identify the removal of significant barriers to competitive entry. This "checklist" is similar to that created by the Department of Justice ("DOJ"), which set forth a list of required steps designed to foster local competition before LECs may begin the provision of interexchange service.<sup>4</sup> The checklist is designed to evaluate the competitive structure of the local exchange market and specifically requires the following steps to be taken:

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<sup>3</sup> *Telecommunications Access Provider Survey*, CCB-IAD Docket No. 95-110, *MFS Communications Company, Inc. Response* (filed Dec. 11, 1995).

<sup>4</sup> Memorandum of the United States in Support of its Motion for a Modification of the Decree to Permit a Limited Trial of Interexchange Service by Ameritech at 15-26, *United States v. Western Electric Co.* (No. 82-0192 HHG). The DOJ checklist initially was prepared to evaluate Ameritech's "Customer First Plan," but is equally appropriate for all LECs.

1. *Unbundling of local transport loops and ports.* The unbundling of the LECs' networks into separate local transport loop and port components obviates the need for competitors to replicate the LECs' entire network of distribution facilities and is essential to enable full competition in local exchange and interexchange access service.<sup>5</sup>

2. *IntraLATA dialing parity.* In the context of long distance competition, the Commission recognized that if the customers of new entrants had to dial additional digits, or experienced excessive post-dial delay, such inconveniences would provide the incumbent carrier with a substantial marketing advantage. This experience is directly applicable to local service competition, and requires the establishment of full intraLATA dialing parity, as essential to the development of a competitive telecommunications marketplace.

3. *The existence of resale-based competition.* The existence of non-facilities-based resellers of local exchange service, for all classes of service, including residential service, is an integral component of sustainable local services competition. Resale-based competition is important to the prevention of discrimination in the pricing, provisioning and maintenance of loop facilities, as well as in the provision of network features and functionality, and excessive charges for access. The opportunity to resell services also is important because it will tend to reduce the barriers to facilities-based entry, since a carrier that already possesses a subscriber

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<sup>5</sup> See *Unbundling of Local Exchange Carrier Common Line Facilities*, MFS Communications Company, Inc. Petition for Rulemaking (filed Mar. 7, 1995) ("MFS Open Loop Initiative" (petitioning the FCC to require all Tier 1 LECs, with the exception of National Exchange Carrier Ass'n ("NECA") pool members, to provide the common line element of interstate switched access service, i.e. the "local loop," on an unbundled basis, at cost-based rates, to state-certified competing providers of such service).

base as a reseller will be able to make facilities investments with less risk and thus will offer services before there is enough traffic to justify investment in switches or trunks.

4. *Reasonable access to poles and conduits.* It is critically important that competitors obtain reasonable and nondiscriminatory arrangements for the sharing of pole attachments and conduit space, as well as access to entrance facilities, riser conduit, and telephone closets, to the extent that such arrangements are under the control of the LEC. Such access is essential to the development of local competition, because the inability to secure access to these facilities could be a significant barrier to entry to a facilities-based competitor seeking to install its own loops.

5. *Interconnection at reasonable rates, terms and conditions.* Effective interconnection arrangements are absolutely critical to fostering competition. Interconnection issues central to competitive developments include: network compensation for terminating calls that originate in another network, local dialing parity, and adequate access to various necessary services, such as unbundled signaling, call completion, Telecommunications Relay Service (“TRS”) and directory assistance.

6. *Number portability.* For the same reasons that competitors must be able to obtain dialing parity, it is critical that they have number portability, including permanent number portability, interim number portability and location portability. Such portability often will involve cooperation between the LECs, vendors of hardware and software, and the interexchange carriers (“IXCs”) who will be delivering traffic destined for ported numbers. Permanent number portability will require LEC cooperation with respect to database consultation, because calls will be delivered directly to the subscriber’s new exchange carrier without having to route traffic



through the former LEC, and thus will involve consulting a database that will supply the information necessary to deliver the call to the correct exchange carrier. Until permanent number portability is established, interim portability, such as through remote call forwarding or direct inward dialing, is possible. Such interim portability must, however, be accompanied by strict reporting requirements to ensure that the LECs provide their competitors with all necessary record data on a timely basis. Finally, competitors must have fair and equal access to number resources, as the neutral administration of number assignment is an essential element of developing telecommunications services and competing for customers.

**B. Other Steps Necessary to Protect Competition. (Issue 11b):**

As the party that has established more expanded interconnection arrangements with LECs than any other competitive service provider in the country, MFS can demonstrate that LECs retain the ability and the incentive to use their control over bottleneck facilities to impose unnecessary delay and excessive costs on their competitors. Some illustrative recent experiences are described below:

*Case 1:* In Georgia, MFS required access to conduit along a bridge in order to link its network with a customer site. The conduit is owned by BellSouth. MFS initially applied for the conduit on November 10, 1994. BellSouth would not provide access to MFS until it completed a “study” of conduit cost and availability. Despite MFS’ numerous attempts to expedite the process, BellSouth did not complete the necessary work and provide MFS with access to the conduit until April 26, 1995 -- almost six months after MFS’ initial request.

*Case 2:* MFS has experienced numerous paperwork-related delays with NYNEX. For example, in one expanded interconnection application in Massachusetts, on March 16, 1995,

MFS submitted an order to NYNEX for seven Flexpath Digital Transport Facilities to be “rolled over”<sup>6</sup> from NYNEX service to MFS fiber. MFS requested a due date of April 28, 1995. On April 28 -- *on the day the rollover was scheduled to occur* -- MFS was informed that the orders would have to be rewritten, with the due date rescheduled for May 17, 1995. NYNEX repeated this tactic twice, informing MFS that the paperwork was incorrect on the date the rollover was scheduled to occur, both on May 31, 1995, and again on June 20, 1995. Each time, MFS was informed that it would have to submit new service orders and would have to request a new due date. After NYNEX finally completed the requested rollover -- more than three months after MFS initially requested it -- the service experienced outages due to NYNEX’s mishandling of call records data. Specifically, the Flexpath service failed on July 31, 1995, and again on August 1, 1995, after NYNEX deleted Preferred Inter-LATA Carrier (“PIC”) code information relating to the customer’s account.

*Case 3:* MFS ordered DS3 service from U S WEST in the Denver area. U S WEST took the order, gave MFS a firm commitment date and let the date pass. When MFS sought service, US WEST claimed that it had never engineered the circuit and that, upon review, US WEST had determined that it was infeasible to deliver the service over existing facilities. U S WEST refused to provide any firm commitment date for installing the service, despite MFS’ requests for expedited treatment.

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<sup>6</sup> A “rollover” in this case refers to a service reconfiguration in which an existing NYNEX customer terminates its NYNEX service and transfers it to MFS. The circuits are physically disconnected from NYNEX facilities and are redirected to MFS’ facilities in an expanded interconnection node within the NYNEX central office.

*Case 4:* In Seattle, MFS ordered a high capacity circuit from U S WEST on May 16, 1995. The circuit was not installed until late October. During this process, U S WEST refused to provide MFS with a firm commitment to turn up the service by a date certain.

*Case 5:* In Florida, MFS was denied access into an AT&T point of presence (“POP”), which is located in a building owned by United Telephone of Florida (“United”). United informed MFS that, because of its arrangement with AT&T, MFS will not be permitted to gain access to AT&T directly. United proposed two alternatives to MFS, neither of which would allow MFS direct access via its own fiber optic facilities to the AT&T point of presence (“POP”), and both of which would require MFS to order service from United in order to access the AT&T POP.

*Case 6:* The Tier 1 LECs tariff volume and term discounts for their high capacity services that provide discounts of 50% - 80% off undiscounted service rates. MFS repeatedly has requested that LECs establish similar discounted rate structures for their high capacity expanded interconnection services. To date, no LEC has made available to its competitors volume or term discounts for its expanded interconnection services. At the same time, the Commission has found that the majority of these LECs have established excessive rates for their expanded interconnection services.<sup>7</sup>

*Case 7:* In one of the most extreme examples of LEC anticompetitive practices, Bell Atlantic caused to be placed on the public record its plans for the retention of physical

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<sup>7</sup> *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, 10 FCC Rcd 6375 (1995).

collocation in many central offices, and then chose to forcibly eliminate all of its existing physical interconnection arrangements. Such unjustified action by Bell Atlantic resulted in substantial inconvenience and expense to its competitors, who had relied upon Bell Atlantic's public statements in devising their interconnection-based deployment plans.

*Case 8:* Quite recently, MFS experienced a complete lack of response from NYNEX when ordering special access in the New York City area. In one instance, MFS submitted an order for service on November 20, 1995 and received a firm commitment date from NYNEX for December 6, 1995. MFS was notified *two days after* the firm commitment date had passed that there were NYNEX carrier problems that prevented MFS' order from being installed. After experiencing numerous delays, nonresponsive action and broken subsequent commitment dates, as of January 16, 1995, MFS still has received no service. In still another occurrence, MFS ordered special access service on November 27, 1995 and received a firm commitment date from NYNEX of December 7, 1995. Again, NYNEX missed the firm commitment date, as well as a subsequent commitment date of December 12, 1995, and still MFS has received no service.

*Case 9:* In a clear attempt to impose excessive costs on its competitors, Southwestern Bell Telephone Company ("SWBT") continues to refuse to adopt the form of virtual collocation long-sought by interconnectors, and has chosen to compel interconnectors to purchase highly-priced, dedicated alarm collection device ("ACD") arrangements.

This catalog of LEC anticompetitive practices is by no means exhaustive, but is merely intended to illustrate some of the tactics used by LECs to disadvantage their competitors. Unfortunately, these are not isolated incidents of LEC mishandling and delay in the completion of orders. The reality of the situation is that such LEC anticompetitive activity has caused

numerous MFS customers to become frustrated as a result of the delays and deficiencies in LEC interconnection arrangements. In comments filed in CC Docket Nos. 91-141 and 94-97, MFS has proposed several actions that the Commission should take to limit the LECs' ability to engage in such unlawful practices.

First, the Commission should prohibit LEC discrimination in costing and pricing practices. That is, LECs should be required to develop their rates for services purchased by their competitors in the same way that they develop rates for services used by end users and IXC customers.<sup>8</sup> The Commission already has made significant strides in this direction by prohibiting LECs from imposing higher overhead costs on interconnectors than they do on their other customers. This approach must be expanded, however, to ensure that LECs do not discriminate in their development of direct costs. Equally important, the Commission should order the LECs to tariff volume and term discounts for expanded interconnection services that are equal in magnitude to the discounts available for comparable LEC special and switched access services.

Second, LECs must be prohibited from discriminating against competitors -- whether interconnected or not -- in provisioning and repair performance. LECs must be required to turn up new services and to repair downed circuits for their competitors with the same speed and quality that LECs provide to their other customers. In order to identify and eliminate such

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<sup>8</sup> See *Expanded Interconnection With Local Telephone Company Facilities*, CC Docket No. 91-141, DA 95-1151, *MFS Communications Company, Inc. Reply to Its Motion for Declaratory Ruling on Local Exchange Carrier Nonrecurring Charges* at 2-5 (filed July 11, 1995) (demonstrating that both IXC customers and competitive access providers ("CAPs") have provided a strong and unified showing confirming that LECs are applying nonrecurring charges ("NRCs") for circuit rollovers in an unreasonably discriminatory and profoundly anticompetitive manner).

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discrimination, the Commission must require LECs to provide far more detailed performance data than they do at present.

Finally, the Commission must establish a method of resolving *ad hoc* disputes on an expedited basis. In comments filed in CC Docket No. 91-141, MFS urged the Commission to adopt an expedited dispute resolution mechanism loosely modeled after the approach taken by the New York Public Service Commission (“NYPSC”).<sup>9</sup> As the examples cited above by MFS make clear, such a dispute mechanism is more necessary now than it was at the time MFS filed its proposal. MFS urges the Commission to take action expeditiously to enforce its procompetitive initiatives.

**C. The Appropriate Procedural Mechanism for Granting Additional LEC Pricing Flexibility. (Issue 12):**

Because additional LEC pricing flexibility will be premised on the status of competition for local services, it will require a factually intensive and LEC-specific demonstration. LECs therefore should be accorded additional pricing flexibility only pursuant to a notice and comment rulemaking proceeding in which LECs bear the burden of showing that barriers to entry have been eliminated and that actual, effective competition has been established, and in which competitors and other interested parties have a full opportunity to respond.

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<sup>9</sup> *Expanded Interconnection With Local Telephone Company Facilities, MFS Communications Company, Inc. Written Ex Parte Submission Concerning Dispute Resolution Mechanisms for Virtual Interconnection*, CC Docket No. 91-141 at 5-7 (filed Dec. 5, 1995).

**D. The Use of Existing Price Cap Categories to Define the Relevant Product Market. (Issue 13):**

In defining the relevant product market, the Commission must not consider individual services, but instead should consider service categories. These categories must include all substitutable and functionally similar services, in order to address concerns over unlawful cross-subsidization. The existing Price Cap service baskets provide a reasonable level of aggregation for this purpose.

**E. The Definition of Geographic Markets. (Issue 14a):**

MFS recommends the use of existing Local Access Transport Areas (“LATAs”) to define geographic markets. LATAs are more appropriate than LEC density zones because they reflect the presence of competition more accurately. To date, the growth of competition has been sporadic and uneven, and has not occurred evenly throughout a given LEC service area. If density zone-specific pricing flexibility were adopted, however, a LEC may be provided pricing flexibility in *every city* within its service area that contains a Zone 1 central office, even though significant competition may have emerged in *only one city*. LATA-specific analysis would allow a more targeted examination of competitive activity. The NYPSC has adopted this LATA-specific approach to LEC pricing flexibility in New York, and MFS recommends that the Commission adopt such an approach in this proceeding.

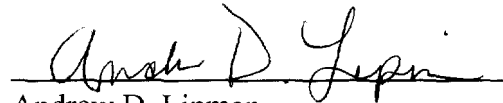
**III. CONCLUSION**

For the foregoing reasons, MFS respectfully requests that the Commission amend its proposed modifications to the LEC Price Cap system to include those revisions suggested by



MFS, in order to avoid irreparable injury to emerging competition and potential LEC  
anticompetitive abuses, in accordance with the discussion contained herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrew D. Lipman", written over a horizontal line.

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Dated: January 16, 1996  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of January 1996, copies of the foregoing  
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